NEGOTIATION VERSUS FORMAL ADVERTISING

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Prepared for

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PREFACE

The ability of military contracting officers to deliver required weapons and supplies at the right place and at the right time has a paramount consequence upon the defense posture of our military establishment. Not only do late deliveries upset planned schedules but, moreover, they threaten the readiness of our operating forces. Accordingly, caution should be heeded in insuring that reasonable purchasing regulations are not supplemented with complex requirements that impede expeditious procurement action.

It will be the purpose of this paper to define the applicability of the two types of procurement used by the Defense Department, negotiation and formal advertising, and to cite some controversial elements. A brief historical resume is presented for introduction and information. An effort will be directed towards examining the required conditions for the use of either negotiation or formal advertising, and it will be pointed out when each method is effective and when it is not.

The recommendations included are advanced for consideration and possible adoption. It is believed that their implementation will greatly enhance procurement effectiveness.

During my extensive research on this subject, which

has always provided me with a student's interest, I visited numerous Navy purchasing specialists. I wish to express my gratitude particularly to the following who were very helpful and generous with their time: CDR John M. Malloy, SC, USN, Staff Director ASPR Division, Office of Secretary of Defense; LCDR S. E. Swenson, SC, USN, Purchasing Officer, Naval Air Material Center, Philadelphia; and Mr. G. D. Fogle, Assistant Director, Purchase Planning Division, Bureau of Supplies and Accounts.

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CHAPTER I

INTRODUCTION

Controversial Problem

During the past decade, while the Armed Forces Procurement Act of 1947 has served as law for Defense Department contracting officers, considerable agitation has been aroused on Capitol Hill about the abuses and alleged inequities in procurement by negotiation. Certain legislators have the fixed opinion that procurement by formal advertising is the only fair, democratic manner of procurement and that the best interests of the public and government will be served by soliciting the preponderance of military requirements by the formal advertising method. As the Hebert Committee stated in its June 15, 1957 report:[1]

> The essential point for discussion is whether it shall be the national policy to vest in the sole discretion of procurement officers of varying degrees of experience, capabilities, maturity and permanence, an annual procurement program in the neighborhood of $18 billion, to such a degree that more than 92 per cent of these dollars shall be spent by so-called negotiation.
>
> We must decide whether we have developed such

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[1] U. S., Congress, House, Subcommittee for Special Investigations of the Committee on Armed Forces, Report on Study of Armed Services Procurement Act, Title 10, U. S. Code, Chapter 137, 85th Cong., 1st Sess., 1957, pp. 642-643.

> skilled and experienced contracting officers and Government negotiators under conditions of shifting or rotation of personnel and limited opportunities for business experience, that the Government has qualified personnel in sufficient numbers to carry on a program of such magnitude, in "negotiations", opposite the skilled, experienced, and permanently employed representatives of American manufacturing concerns; whether, in such circumstances, the Government will come off better or worse financially on the product it receives and the prices it pays, than if American businesses competed among themselves by sealed bidding, with Government acting as arbiter rather than participant.

The Defense Department, on the other hand, has endeavored to apprise the Congress of the practical need for extensive use of the negotiation method, but the recurrence of highlighted exception cases has sustained vigorous Congressional inquiry.

The debatable question asked is: Should the Armed Services Procurement Act be amended to place the negotiation method of procurement on the same status level as the formal advertising method?

Historical Background

In 1860, legislation was passed by Congress (Section 3709 of the Revised Statutes)which restricted military purchasing, with narrowed exceptions, to the formal advertising method, which required solicitation of competitive bids and formal award to the lowest responsible and responsive bidder. Thereafter, until 1947, a hodgepodge of supplemental and rigid procurement laws were amassed covering special situations, and directed towards emphasizing advertised sealed bidding as the

norm for procurement. When the military expansion program commenced in 1940, it was realized that the procurement regulations were too unwieldy to cope with the need for accelerated procurements in war preparation. As a result, Public Law 671, known as the Speed-Up Law, was passed; however, the President restricted negotiation, permitted by the Act, to cases meeting certain conditions and required each contract reviewed for approval by the Service Secretary. Between 1942 and the Armed Services Procurement Act of 1947 (passed in February 1948) the Services negotiated nearly all requirements under authority of the First War Powers Act and Executive Order 9001. During the Korean War and until June 30, 1958 the negotiation authority was based upon reinstatement of Title II of the First War Powers Act by Public Law 982, 81st Congress and by continuing legislation. However, the Defense Department followed the authority of the Armed Services Procurement Act of 1947 as a general rule, and used the authority of Title II of the First War Powers Act only in a few instances where it was more appropriate.

Present Law

The Armed Forces Procurement Act of 1947 specifies that traditional formal advertising will be the general method of purchasing, but negotiation may be used in 17 delineated exceptions. It would appear then that in the minds of Congress

negotiation as a purchase method does not enjoy the same "respectability" and "dignity" as the formal advertised method, and it is permitted only as an exception. Nevertheless, the Armed Forces have been able to live with the Act which has proved adequate, though cumbersome, in meeting the dynamic, technical procurements for the modern military machine.

CHAPTER II

PROCUREMENT METHOD TREND

Growth of Negotiation Procedure

Since enactment of the Armed Services Procurement Act of 1947, the percent of negotiated has increased sharply, though it has remained fairly constant for the past several years. During fiscal year 1959 Defense Department negotiated contracts amounted to 95.1% of the total 5.8 million actions and 78.8% of the total money value ($16.2 billion). Table 1 presents a detailed breakdown of procurement actions during fiscal year 1959 by type, dollar values and extent of competition. With further progress towards a "push button" military organization, the complexity of weapons will continue to grow, and more and more advanced equipment will be demanded for the operating forces.

A recent staff report provided the Congressional Joint Economic Committee contained the following information relating to Defense Department procurement during fiscal year 1959:

> Only 70 percent of the dollar value of procurement by negotiation was attributed to three exceptions to formal advertised bidding:

Net value of military procurement actions, by program—fiscal year 1959

[Amounts in thousands]

Program	Total amount	Percent
Aircraft	$6,487,043	30.5
Guided-missile systems	4,490,240	21.1
Electronics and communications equipment	2,474,171	11.7
Ships	1,094,793	5.2
Tanks, automotive	350,096	1.6
Weapons	186,997	.9
Ammunition	356,436	1.7
Fuel and lubricants	981,382	4.6
Textiles, clothing, and equipage	177,654	.8
Military building supplies	14,225	.1
Subsistence	490,851	2.3
Transportation equipment	753	(1)
Production equipment	147,192	.7
Construction	1,409,792	6.7
Miscellaneous	704,795	3.3
Services	1,875,477	8.8
Total with business firms for work in the United States, actions of $10,000 or more [2]	21,241,697	100.0
Actions of $10,000 or more	21,241,697	
Actions of less than $10,000	1,502,532	
Total with business firms for work in the United States	22,744,229	
With business firms for work in the United States	22,744,229	
For work outside the United States	1,410,051	
Educational and nonprofit institutions	238,438	
Intragovernmental	758,347	
Total net value of military procurement actions	25,312,065	

[1] Less than 0.05 percent.
[2] Data by program not available for actions of less than $10,000.

Number and net value of military procurement actions, by method of procurement—fiscal year 1959

Method of procurement	Number of actions	Percent	Net value (thousands)	Percent
Advertised	296,077	4.9	$3,446,672	21.2
Negotiated competitively	47,780	.8	2,371,173	14.6
Negotiated small purchases of $2,500 or less within the United States [1]	4,830,311	82.9	769,325	4.7
Negotiated for procurement and use outside the United States	491,062	8.4	923,955	5.7
Negotiated with 1 source	34,902	.6	[2] 8,237,830	50.7
Negotiated, competitive status unknown [3]	137,735	2.4	498,308	3.1
Total	5,827,867	100.0	16,247,263	100.0
Intragovernmental	847,430		758,347	
Modifications pursuant to terms of existing contracts (negotiation authority not required or used)	23,600		8,306,455	
All other procurements	5,827,867		16,247,263	
Total	6,698,897		25,312,065	

[1] Small purchase procedures require that a reasonable number of quotations must be obtained on purchases which exceed $100.
[2] Most of this amount was, in fact, awarded by contracts which resulted from competitive designs or proposals.
[3] Data on competitive aspects of procurements between $2,500 and $10,000 not available.

* Source: U. S. Congress, Senate Subcommittee of the committee on Armed Services, Hearings on Procurement Study, 86th Congress, 2nd Session, Part I, 1960, pp. 23–24.

Extent of competitive procurement

[Amounts in thousands]

	Amount	Percent
Purchases from contractors in the United States:		
Purchases made on the basis of price after competition among 2 or more prospective contractors:		
(a) Formally advertised	$3,255,082	14.1
(b) Negotiated	3,442,083	15.0
Total	6,697,765	29.1
Estimated purchases or modifications of contracts made following technical or design competition (based on use of sampling described on p. 2 of statement, by spreading sample results over total applicable new procurement and contract modifications)	13,635,429	59.3
Total competitive procurement (price competition on actual basis) (design competition on estimated basis)	20,333,194	88.4
Total negotiated without competition	2,679,961	11.6
Total	23,013,155	100.0
All other:		
Intragovernmental procurement	758,347	
Negotiated for procurement and use outside United States	1,042,255	
Competitive status unknown	498,308	
Grand total	25,312,065	

[1] The percentage figures on exhibit 2A differ from those on exhibit 2 because, in exhibit 2A, the modifications pursuant to the terms of existing contracts were included in the totals. In exhibit 2, these modifications, which amounted to $8,306,455,000, were not included in the percentage figures shown since they did not involve any new procurement.

1. For technical or specialized supplier requiring substantial initial investment or extended period of preparation for manufacturers, 33 percent.

2. For experimental development and research contracts, 18.9 percent.

3. As impractical to secure competition by formal advertising, 18.6 percent.[2]

Defense department witnesses at Congressional hearings have testified that the Services have religiously complied with the Armed Services Procurement Act provisions and that the relatively few deviations uncovered were caused by people taking unwarranted liberties or calculated risks. Further, that the bulk of purchasing personnel are loyal, trustworthy and dedicated. Regulations should be tailored to facilitate the purchase function, and not be complicated and restrictive in an attempt to curb every human failing. The Hebert Committee, after looking at procurement directives and instructions "and the many obligations assumed by a contracting officer", said: "These are hazards great enough to justify something like flight pay."[3] Since these regulations are so extensive and often subject to varied interpretation, the contracting officer must always be prepared to support his decisions by detailed facts. His personal judgment is restricted and stifled due to the rigidity of procurement directives.

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[2] American Enterprise Association Inc., Bill Analysis--Proposals to Amend Military Procurement Statutes, 86th Cong., 2d Sess., Report No. 6, March 21, 1960, p. 10, citing Background Material on Economic Aspects of Military Procurement and Supply, Committee Print, February 16, 1960, p. 86.

[3] Army-Navy-Air Force Journal, January 23, 1960, p. 11.

Figure 1 points up the complex range of legal "hurdles" a contracting officer is faced with.

Inasmuch as the Defense Department has literally followed current regulations for a decade and has statistical evidence that negotiation is absolutely required for a large majority of procurements, the limitations and practical use of formal advertising should be assessed further by advocates of formal advertising. Negotiation is a logical and practical manner today of buying the vast and complex military needs, and this existing fact should be acknowledged and understood.

The Assistant Secretary of the Air Force for Materiel, testifying on January 14, 1956 observed:[4]

> The bulk of the items we buy does not lend itself to the use of the formally advertised method of procurement. This, in effect, was recognized in the Armed Services Procurement Act of 1947 which authorized the use of negotiation in placing contracts for the incredibility complex weapons which the times require.
>
> The complicated weapons and related research and development which we procure (a) involve continuous technological breakthroughs in the state of the art; (b) require continuous engineering during the production stage to improve performance, safety and producibility; (c) preclude the preparation of detailed specifications as a basis for purchase action; (d) make difficult the determination of estimated costs so that special contract techniques must be used; and (e) require huge investments in production facilities, the duplication of which would be tremendously costly to the country.

Briefly, the military department purchases are confined to the following three broad categories of items:[5]

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[4]House Subcommittee of the Committee on Armed Services, Report on Study of ASPA, 1957, p. 672.

[5]U. S. Congress, Senate, Procurement Subcommittee of the Committee on Armed Services, Hearings on Procurement Study, Part I, 86th Cong., 2d Sess., 1960, p. 8.



You'll have to eliminate some hurdles, "Uncle," if you expect timely performance!

Figure 1.

1. Items which are identical with those required by other Government agencies, such as furniture, housekeeping supplies and tires.

2. Commercial type items and items of conventional military equipment capable of being produced by many suppliers. These include clothing, hardware and petroleum.

3. Items of research and development nature, and production of complex military weapons and equipment.

Often the Defense Department is unfairly criticized by the statement that 95 percent of the procurement is done without competition. This charge is misleading and does not tell the full story. First, procurement actions only and not money value are considered. To be sure, only 4.9 percent of the buys are by formal advertising, but this amounts to 21 percent of the total dollars spent. Second, it ignores the fact that 82.9 percent of all purchase actions are small purchases that are negotiated since the administrative costs of formal advertising would be prohibitive in consideration of the small value of the items. Third, the assumption that negotiation is not competitive is erroneous. And fourth, it does not account for other elements of competition besides price which are compared in negotiation.[6]

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[6] Ibid., p. 10.

CHAPTER III

FORMAL ADVERTISING

Criteria

The following criteria, according to John Perry Miller, Professor of Economics at Yale, must be present for advertising to be applicable or effective:[7]

1. Adequate descriptions of what is to be purchased; this suggests an item that is reasonably stable in design, and that by whomever produced, will be essentially the same, including the minimal quality.

2. The specifications of the item are realistic and "honest"; that is, not beyond Industry capability, nor tailored to a particular source, but capable of being met by a number of producers.

3. The details of the item may be publicized, not being restricted by security classifications or by proprietary design.

4. That more than one qualified source is willing to submit a bid and to undertake the supply.

5. That the basis for selecting the successful bidder could be solely on the price offered.

Limitations

These criteria apply mainly to standard items or to those items with a repetitive procurement history that have developed static specifications. They rarely apply to buying

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[7] B. Edelman, "How Procurement is Accomplished Today", Procurement by Negotiation or Formal Advertising, Presentations at Annual Meeting of National Security Industrial Association, 1957, p. 16.

new weapons that have not been perfected or previously procured. Formal advertising is ideal for purchasing general stores supplies, fuel, provisions, General Service Administration warehouse items and similar system stock items, which in recent years have been placed under Single Manager procurement or procurable through the GSA. As long as these criteria are satisfied, formal advertising is an appropriate and effective means of procurement.

In past years in peace-time the services built their own prototypes "in house" at such activities as the Naval Gun Factory and the Naval Aircraft Factory, during which time detailed specifications could be prepared and formal advertising would be possible since no urgency existed. That situation, however, does not exist today. Now, with the everchanging technology and the need to expedite an idea from the thought stage to the production stage, there is no time to allot to "messaging" and perfecting specifications. Instead, research and development contracts are awarded at the soonest possible time through negotiation, so that the engineering talent of civilian industry may be capitalized upon. Nor can the production of advanced weaponry be curtailed because of the lack of elaborate, all-inclusive specifications. There is only enough time to provide prospective suppliers with bare data, supplemented by conversations, so that there is a meeting of the minds and the objectives are understood. Such expedient purchase action does not fall within the realm of formal advertising.

Another factor to realize is that the military has shifted from the past repetitive, production-type contracting. Today, even numerous first-buy contracts are cut back or canceled due to rapid obsolescense, so that many weapons are bought only on a "one shot" basis due to supersedure.

Upon receipt of a request to purchase an item, the contracting officer must decide what type of purchase action is appropriate--formal advertising or negotiation. He must seek answers to the following type questions: Just what is the quality of the specifications? Are they definite or indefinite? Would they result in a bad advertised procurement? Are all possible sources able to meet contingencies--i.e., investments, tooling, engineering, etc? Should competition be made on price? Does one company have such an edge as to preclude real competition, such as substantial initial investment in facilities, etc? Or, is only one company in a position to meet the delivery requirements? Have you really a basis for arriving at a price? Invariably, after thorough analysis, any contracting officer would come to the conclusion that in general formal advertising is a satisfactory procurement method only for those items which have been produced many times before by many people. Of course there are exceptions, such as GSSO type items, simple machine part items and the like.

Appendix I illustrates the thorough type of documentation prepared by a buyer at the Naval Air Material Center,

Philadelphia, in determining the feasible method of procurement. All questions must be carefully considered and answered. Formal advertising must be used as the norm, and the freedom of purchasing by negotiation is permitted only to a limited degree. Not only must certain Findings and Determinations often be made in justification of the use of negotiation, and contracting formalities observed, but also the contemplated purchase must fall within one of the allowed categories specifically set forth in the Armed Services Procurement Act.[8] Before the contracting officer decides that the formal advertising method is appropriate, he must be certain that he is capable of completely describing the full needs of the Government in the invitation for bids.

The principles of formal advertising contemplate that:[9]

> (1) all persons have an equal right to compete for Government contracts; (2) unjust favoritism, or collusion or fraud, be eliminated in the letting of contracts; and (3) the Government should secure benefits that arise from widespread competition. To accomplish these purposes, Invitations for Bids, together with the specifications and other conditions incorporated therein, must be such as to permit competitors to compete on a common basis. This concept of insuring that all prospective bidders be able to compete on a common basis is, perhaps, the most important and exacting requirement of the formal

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[8]U. S. Department of the Navy, Office of the General Counsel, Navy Contract Law (NAVEXOS P-1995), 2d ed., (Washington: U. S. Government Printing Office), p. 117.

[9]CDR John M. Malloy, SC, USN, "Procurement By Formal Advertising--A Critical Analysis" (Unpublished thesis No. 78, Industrial College of the Armed Services, 1958), p. 8.

> advertising method of procurement. It means that the preparation of each invitation for bids is often the most difficult and exacting step in an advertised procurement.

Specification Restrictions

Definite and complete specifications must be included in the formal advertising Invitation for Bid to insure full and free competition, even though these specifications may be of a specific performance or the combination type. The Comptroller General has stated in substance "that specifications generally must define the item to be furnished in sufficient terms that each bid will be for substantially the same product or service, so that all bidders may compete on a common basis and assure the Government the lowest available price."[10] Although the prospective bidder may obtain an interpretation of the specifications from the contracting officer, he cannot be provided any individual information which would give him advantage over other bidders. Accordingly, all bidders have an equal opportunity to compete.

The pattern of procurement selected is related to the type of specifications provided and the factors that influenced their preparation. Though specifications may be purely design or performance in nature, they are generally a combination. Unless a performance specification can be made tight and be subject to uniform interpretation, it cannot be successfully used in formal advertising. Normally design

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[10] Ibid., p. 10, citing Decisions of the Comptroller General, 32 C.G. 384.

specifications or a combination are used in soliciting advertised bids.

It would be foolhardy and a waste of valuable time and manpower for the services to use talented engineers to produce voluminous design specifications in an effort to increase formal advertising. The present engineers are already overburdened with advanced projects and revising existing specifications due to improved modifications. Industry engineering services are already in being and it would be a duplication at unwarranted expense for the Government to generate massive, detailed specifications that undoubtedly would be fast obsolete. The excessive use of specifications in the military prompted the following criticism in A Nation's Business (October 1958) magazine article entitled "Use Performance Standards Instead of Detail Specifications":[11]

> Fantastically detailed specifications are drawn for even the simplest defense supplies in accordance with the Armed Services Procurement Act. The specification sometimes takes years to prepare. Specifications for a self-locking nut, for example, cover 34 pages. An electric cable takes 103 pages to describe. The specifications for an Army field jacket are detailed in 21 pages. And requirements for an electron tube take 190 pages to list.

Though the Congressional testimony regarding this comment revealed some inaccuracy of fact, it does, nevertheless, reflect public concern over excessive detailed specifications. Further, as Secretary McGuire commented,[12] " . . . I am sure we have bad

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[11] U. S. Congress, House, Subcommittee for Special Investigations of the Committee on Armed Services, Hearings, Cataloging and Standardization Under Public Law 436-82d Congress, 85th Cong., 2d Sess., 1958, p. 781.

[12] Ibid., p. 784.

specifications--we know of specifications we are trying to correct that really don't make sense," which evidences that the Defense Department is having critical problems even on specifications for standard type items.

Specifications require the laborious task of continual review to keep current. New technology, improved materials and designs dictate frequent supersedure of specifications. Often it is discovered through difficult experience that specifications are overspecified, too rigid, and pose a hazard.

Mr. Dean Ammer, Executive Editor of Purchasing Magazine, testified as follows on how tight specifications may work to the disadvantage of the government:[13]

> This J bolt was rigidly specified by engineers of this company as an item turned out on a screw machine. If advertised bidding were followed, that rigid specification would have to be adhered to at all times. A specialty supplier came in, and, using the technique of competitive negotiation, was able to offer the same item at almost 90 percent reduction. This item, made by a specialty supplier by a process called thread rolling, which just shoots it in and out in one pass instead of elaborately turning it on a machine, costs 1.5 cents as against approximately 11.5 cents.

A contracting officer once related to this writer the difficulty of obtaining NORTON abrasive wheels by formal advertising. The NORTON type was used by the machinists in

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[13] U. S. Congress, Senate, Subcommittee of the Committee on Armed Services, Hearings on Military Procurement on S. 500, S. 1383 and S. 1875, 86th Cong., 1st Sess., 1959, p. 443.

the shops over the years because they had proven to be far superior and reliable. Yet, it was impossible to prepare a specification that would include the quality resulting from the NORTON process. Other abrasive wheels that met the existing specifications, and were lower priced, had to be accepted and were used reluctantly. Many more wheels were used to perform an equal amount of work.

Realities of Award to Lowest Bidder

According to law, the award on formal advertising must be given to the lowest, responsible bidder who meets the minimum specification. As explained in Navy Contract Law:[14]

> Only under rare and special conditions may a bid be accepted that takes exception to the invitation for bids or may a bid be changed after the public opening; and only under peculiar circumstances may mistakes or irregularities in bids be rectified. Seldom can such important bargaining factors as quality, price, and business reputation be unrestrictedly considered by the Government's purchasing officer; and seldom can there be any give and take, between buyer and seller, over the inclusion and wording of contract clauses. Each transaction is entered at arm's length and is carried out with virtually no opportunity for negotiating the deal itself or the particular terms of the deal.

Quality is no factor, except as far as it conforms to the bare requirements of the specification. The fact that Government would be getting more value at a slightly higher price is immaterial. Congressional attitude in the U. S. House of Representatives favoring formal advertising on the

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[14]Department of the Navy, Navy Contract Law (NAVEXOS P-1995), pp. 115-16.

basis of lowest cost is reflected in the following:[15]

> This committee is of the firm belief that, as a general matter, this method gives the best assurance that (a) the Government as a purchaser will receive the best bargain available, and (b) suppliers in a position to furnish the Government's requirements will have a fair and equal opportunity to compete for a share in the Government's business.

Ironically, it is interesting to note the following varied sentiment expressed during the same period in the U. S. Senate:[16]

> However, the committee also recognizes that during the time this legislation has been in effect a substantial number of strict administrative interpretations have been made, out of which has grown the present traditional approach that Government contracts must be awarded primarily on a lowest price basis, irrespective of the best public interest or a lower ultimate cost. While existing law does not require this result, it is nevertheless a fact. Take, for example, the contracting officer who determines that a low price is less important in a particular procurement than other valid factors, such as urgency of need, quality of product, or lower ultimate cost. Should he make an award on such a basis to someone other than the lowest bidder, he is immediately placed on the defensive and must justify his action or might even be personally charged for the apparent excess cost. This attitude has had the only result which could be expected--the award of contracts in a purely mechanical way to the lowest bidder with no exercise of judgment or discretion on the part of the purchasing officer. The committee is firmly of the opinion that this is not in all cases the best way to conduct business.

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[15] U. S. Congress, House, Committee on Armed Services, Report 109, Facilitating Procurement of Supplies and Services by the War and Navy Departments, 80th Cong., 1st Sess., 1947, p. 3.

[16] U. S. Congress, Senate, Committee on Armed Services, Report No. 571, Armed Services Procurement Act of 1947, 80th Cong., 1st Session, p. 2.

Inasmuch as price is the single factor in deciding a formal advertised award to responsive and responsible bidders, there is a tendency for "cut-throat" competition on prices, and inferior items that are provided barely meet the specification standards. Good, reputable suppliers are easily discouraged from seeking government business. The old axiom "You get what you pay for" is a truism even for Government procurement. Suppliers endeavor to furnish the cheapest product they have that falls within the loosest literal interpretation of the requirements so that profits may be maximized. What the supplier actually offers under formal advertising is, in the main, the lowest quality item on his shelf or that he can produce. Since specifications cannot describe all details, items are generally fabricated by tailoring manufacturing operations to cut costs by using inferior materials and construction. Durability and quality are well-nigh impossible to spell out in specifications and many suppliers are not concerned with their product reputation when bidding on military formal advertised procurements.

The firm restrictions imposed by law upon specifications for formal advertising are stated succinctly as follows:[17]

> Specifications must be drawn with regard for the actual minimum needs of the Government and may not reflect mere administrative preferences for a particular make or brand, or favor the product of any individual or class of suppliers over others. The test is what is required, not what may be

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[17] Department of the Navy, Navy Contract Law (NAVEXOS P-1995), pp. 57-58.

> desired. . . . Even where the Comptroller General has acquiesced in the use of an "or equal" purchase description because undue difficulty would be encountered in drafting detailed specifications, he has required that the invitation state in plain and simple terms the essential requirements and minimum needs of the Government as to the specified item and the extent to which deviations from the specified item will be acceptable.

The influence of this "Minimum quality--lowest price" philosophy creates a situation which makes it difficult for the Government to take advantage of new developments, current know-how of industry, better quality and other factors which effect value. Unfortunately, the people who specify and determine requirements do not always have the benefit of knowledge of what is on the market which becomes available to the contracting people during a purchase action, and the administrative action required to change requirements under the present law often times seem to those on the scene to be impractical.

Under formal advertising the contracting officer is limited to accepting only conforming bids, but he may waive informalities in bids. The Comptroller General's decision in this matter is in part:[18]

> The primary question for determination in this and similar cases is whether the deviation proposed to be waived goes to the substance of the bid so as to affect either the price, quantity, or quality of the articles offered and therefore is prejudicial to the rights of other bidders or is merely a matter of form or some immaterial variation from the exact requirements of the specifications such as would not affect either the price, quality, or quantity of the articles offered.

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[18] Ibid., p. 83, citing 17 Comptroller General Decision 554, 558, 559.

In other words, any bid that does not meet the essential requirements of the invitation for bid must be disqualified so that all bidders will be competing on an equal basis.

However, subsequent to the opening of bids, at which time the prices are announced, no offeror may retrieve his bid. If this were permitted, the privilege would be an open invitation for fraud by the bidders. Nevertheless, when a bidder has truly made a mistake in bid and can prove his intention beyond doubt, they may, depending upon the circumstances, withdraw the bid or make correction of the bid. But if the mistake cannot actually be substantiated, it remains subject to acceptance by the offeree, the Government.[19] Under the negotiation procurement procedure, the bidder can alter the particulars of his proposal at any time and has the option of withdrawing his proposal if he desires. Also, under negotiation, he can discuss all requirement details in full; whereas, under formal advertising there is no chance after bid opening to discuss various possible interpretations to insure a meeting of the minds.

Deciding Responsibility of Bidders

Contracting officers have often tried to restrict bidders to those having certain minimum standards of experience and performance. The Comptroller General has declared this practice to be improper and that the requests for bids may

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[19] Ibid., p. 70.

not include unreasonable requirements which would restrict the eligibility of suppliers. Though this is the general rule, the Comptroller General has allowed a few special exceptions.[20] Of course, where at all possible, contracting officers may require suppliers to have their products pre-tested for placement on the Qualified Products List as a condition of eligibility to bid.

It is very difficult for a contracting officer to disqualify a marginal producer as non-responsible. Further, the General Accounting Office has stated that it will review the cases of low-bidders rejected as non-responsible, and the burden of proof is on the Contracting Officer. Accordingly, many contracts are awarded to questionable bidders because it is just too difficult and time consuming to do otherwise.[21] Just because a contractor has been delinquent in the past and in the contracting officer's judgment is unreliable, he cannot be rejected just on that basis as non-responsible. The fact that the lowest bidder never actually produced the item before is also no reason for disqualification unless the Qualified Products List (QPL) provision is applicable. In this connection, it is recognized that even if a supplier makes an item once and is placed on the QPL, it doesn't necessarily mean he is capable of producing the same again. This fact has been discovered through bitter experience.

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[20] Ibid., p.60.

[21] Malloy, p. 18.

Congressional sentiment with regard to the determination of whether a particular dealer is a responsible bidder has been expressed as follows:[22]

> The question whether a particular dealer is a responsible bidder requires sound business judgment, and involves an evaluation of the bidder's experience, facilities, technical organization, reputation, financial resources, and other factors. The service concerned with the procurement of goods of the type dealt in by the bidder is naturally best qualified to make this evaluation, and broad discretion is accordingly reserved to the service in this respect.

Contracting officers have the criteria set forth in the Armed Services Procurement Regulation 1-307 as their guide in determining the responsibility of bidders. However, these conditions are subject to varied interpretation, and it is encumbent upon the contracting officer to judiciously examine each element to assure that he is able to answer any challenge. Unfortunately, he must be able to support all of his opinions with fact and, therefore, cannot exercise personal judgment to much degree.

Among numerous factors to be considered in determining the responsibility of bidders, the contracting officer must:[23]

> establish that the prospective contractor is a manufacturer or regular dealer in the supplies sought; that he has adequate financial resources; that he can comply with the delivery schedule; that he has a satisfactory record of prior performance and integrity and is otherwise qualified and eligible to receive an award under applicable laws and regulations.

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[22]Senate Committee on Armed Services, Report No. 571, ASPA, 80th Cong., 1st Sess., p. 16.

[23]Senate Subcommittee on Armed Services, Procurement Study Hearings, 1960, Part I, p. 66.

Answers to these questions require careful investigation which is normally accomplished by a preaward survey and involves a determination of qualifications to perform, including in many cases an evaluation of quality control and inspection methods and procedures. Contracting officers are well aware of the type characters portrayed in Figure 2 and are legally prohibited to deal with them.

Comparative Costs with Negotiation

The matter of whether formal advertising or negotiation administrative costs are higher is difficult to assess as they depend upon the nature of the item and the complexity of the procurement. Paper work expenses might be higher in one instance in formal advertising due to wider solicitation; however, these costs could be exceeded by utilizing more of a buyer's time in conducting negotiations. A few years ago the Army made an analysis on subsistence procurement and determined that in the experiment negotiation administrative costs were only 60% of formal advertising costs. Unless watched for, paperwork can cost more than the material purchased, especially where voluminous specifications are involved.[24] Small purchases are made by negotiated Imprest Fund and Blanket Purchase methods for economy and speed. It is not believed in the best interest of the taxpayer to continue the "open door" solicitation policy of formal advertising, especially on low-cost buys. Under

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[24] "The Truth About Military Buying", Purchasing Magazine, October 1957, p. 120.

12. Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities;

13. Consideration as to whether the prospective supplier is located in a surplus or scarce labor area;

14. Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

15. Consideration of the extent of subcontracting;

16. Consideration of the existing and potential workload of the prospective supplier;

17. Consideration of broadening the industrial base by the development of additional suppliers;

18. Consideration of whether the contractor requires Government-furnished property, machine tools, or facilities; or Government-operated test facilities;

19. Consideration of contract performance in facilities located in dispersed sites; and

20. Advantages or disadvantages to the Government that might result from making multiple awards.

Documentation and Analysis

As a member of a Contract Review Board for two years at a large purchasing activity, this writer witnessed a commendable performance by Navy civilian negotiators who were very conscientious in obtaining the best buy in the Government interest. Negotiators kept their files well-documented and presented their cases in an expert manner. I can recall no case where the action recommended by the negotiator did not stand up under careful analysis of all factors, policy and business. The assertion by some legislators and newspapers that Service buyers are substandard or irresponsible is an

unfair generality and an affront to many loyal, capable civil servants. As mentioned in Purchasing Magazine,

> A lot of people who try to make a little legitimate profit on contracts with the Government have a completely different opinion. . . . The average Armed Forces buyer is at least as well educated as his civilian counterpart; college graduates are the rule not the exception. . . . When it comes to purchasing training, the Armed Forces have no equals in private industry.[38]

Hon. Courtney Johnson, Deputy Assistant Secretary of the Army, supported this viewpoint when he stated:

> For many years prior to my present work with the Army, I was in the contracting business, and I dealt extensively with the placing of contracts for my Company, Defense Department contracts, and the administration of those contracts. . . . I can only say that it is a most meticulous process. Every detail of the award of those contracts is checked and checked by men who really know what they are doing, and everything is safeguarded to the maximum extent.[39]

During negotiations and considerations of the twenty factors listed heretofore, the negotiator is able to determine the quality and quantity of the research or production required, the ability or capacity to perform, the need for additional facilities, the type of contract and the price to be paid. As testified by CDR J. M. Malloy, Office of SECDEF,[40]

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[38]"The Truth about Military Buying", Purchasing Magazine, October 1957, pp. 121, 127.

[39]U. S. Congress, House, Subcommittee for Special Investigations of the Committee on Armed Services, Hearings on the Study of the Armed Services Procurement Regulations and Departmental Implementation Thereto, 85th Cong., 2d Sess., July 16-18, 1958, p. 4.

[40]Senate Subcommittee of the Committee on Armed Services, Military Procurement Hearings, 1959, p. 140.

> Our experience has shown that we can and do save large amounts of Government funds by critically examining the price which is initially quoted. By providing appropriate pricing techniques, we can eliminate substantial amounts which a contractor would otherwise include in his price to cover contingencies. Such flexible pricing techniques as price redetermination cannot be utilized in formally advertised contracts. Neither could we take advantage in a formally advertised transaction of improved designs and specifications which are often brought to light during the negotiation procedures.

Contract Selectivity

Unlike formal advertising which restricts the type of contract to firm fixed-price, with or without escalation, negotiation allows for a variety of contract types, with selection of the type to fit the situation. Since it is near impossible to forecast all costs on new, complex procurements, bidders are reluctant to accept blind risks and demand financial protection in many contracts.

Fixed-price contracts are to be used for negotiated contracts as well unless one of the following allowed types fit the particular situation: (1) Cost-reimbursement contract, (2) special incentive contract or (3) special-purpose contract. The type of contract and pricing are interrelated and, therefore, are considered together in negotiation. Some of the factors considered in determining the appropriate type of contract are:[41]

1. The type and complexity of the item;

2. The urgency of the requirement;

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[41] Senate Subcommittee of the Committee on Armed Services, Hearings, Procurement Study, 1960, Part I, p. 80.

3. The period of contract performance and the length of the production run;

4. The degree of competition present;

5. The difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience, or the instability of design;

6. The availability of comparative cost data, or lack of firm market prices or wage levels;

7. Prior experience with the contractor;

8. The extent and nature of subcontracting contemplated;

9. The assumption of business risk;

10. The technical capability and financial responsibility of the contractor; and

11. The administrative cost to both parties.

Advantages

In summarization, the following advantages are inherent in negotiation:[42]

1. Negotiation enables exploration of the proposers' cost data for the opportunity to eliminate unnecessary costs based on misunderstood requirements; correction of unsound allocations of cost; detection of straightforward errors of computation, if revealed; and most important, waiving of contingency factors for possible future situations by employment of appropriate price-adjustment provisions or contract types.

2. Negotiation contracts and discussions with sources enable a partial evaluation of a potential contractor's competence.

3. Negotiation is the tool for eliciting technical contributions in the form of suitable proposals for attaining a desired end-result; or even a sounder counter-proposal from a business standpoint when the contractor has the opportunity to understand, to absorb the ultimate objective.

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[42]B. Edelman, pp. 26-27.

4. Negotiation is the necessary method for putting the project in the proper or best spot or source when the controlling considerations are either technical competence, support of mobilization plans, small business policy, labor area relief, attaining the economies of standardization, or employing existing facilities.

5. Negotiation is the means of procuring within a minimum of time, or when urgency dictates.

6. Negotiation should when employed by competent personnel and under appropriate management controls, result in greater economy, considering the price paid and cost of procurement effort.

7. Negotiation enables development of a more competent, more stable buying force through utilization of more individual initiative and ability, and by encouraging careers for able personnel through maximizing their opportunities for contributions.

8. Negotiation permits keeping uppermost in mind, as decisions have to be made, whether the National Defense will be advanced by each decision made.

CHAPTER V

NEW DEVELOPMENTS

Two Step Formal Advertising

The Two Step Formal Advertising method of procurement consists of (1) submission and evaluation of technical proposals without pricing to determine acceptability of the products offered, and (2) issuing invitations for bids only to those firms having acceptable proposals. It is used where specifications are not adequately definite to permit full and free competition by formal advertising. Upon negotiating acceptable understandings, a fixed price contract can then result from formal advertising procedures. Each bidder submits his price based upon the specifications and his Bidder's Proposal as accepted under the Letter Request for Technical Proposal.

At the suggestion of Subcommittee for Special Investigations, House Armed Services Committee, the Air Force has experimented with the new method and has used it in 108 instances ($40 million value) between April 1957 and 30 June 1959. Also the Bureau of Aeronautics, Navy Department, has used it 3 times. Neither Service encountered difficulties,

and as personnel gained familiarity with the new procedure, the average time was reduced to approximate that for standard actions. All members of the Armed Services Procurement Regulations Subcommittee, Office of Assistant Secretary of Defense for Supply and Logistics, approved of the new method for adoption and the committee is continuing in its work preparing proper regulatory language.[43]

It appears to the writer that two-step formal advertising is merely another means of arriving at a specification, and seems to offer no advantage over competitive negotiation. The Navy Procurement Directives and Navy policy for awarding R & D contracts recognizes that technical proposals are legitimate means for initiating contracts.[44] There does not seem to be much point in using this hybrid negotiation-formal advertising procedure.

Further, the following questions come to mind concerning two-step formal advertising: If we are limiting the actual advertisement, that is in phase two, to those who have established their qualification on the basis of phase one, is this truly formal advertising in the sense of the statute? If set-aside for small business are not considered as formal advertising, but rather as negotiation, can we on the other hand classify this new method as formal advertising? At best,

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[43]Memorandum from Major Harvey E. Steinberg, USAF, Chairman Subcommittee of the Armed Service Procurement Regulations Committee, Subject: Case 59-66--Formal Advertising--Two Step Procedure, August 31, 1959.

[44]Department of the Navy, Navy Procurement Directives (NAVEXOS P-1034) (Washington: U.S. Government Printing Office), par. 3-2001.

two-step formal advertising appears to be only a statistical drill.

Pending Legislation

S. 500 (86th Cong., 1st Sess.) Introduced by Senator Saltonstall

The purpose of this bill is to (1) cut down lead time in the development of complex military equipment, and (2) to improve the efficiency and economy of Government procurement. The legislation proposes changes of existing statute to:[45]

1. Establish for the first time a complete policy for Armed Services procurement.

2. Raise competitive negotiation to an equal status with formal advertising.

3. Permit the unrestricted use of Cost-Plus-Fixed Fee type contracts for research and development programs.

4. Establish performance specifications as the preferred type of specification.

5. Recognize, define, and establish the basic concept for "operational systems" procurement.

6. Eliminate from renegotiation those types of contracts wherein the reasonableness of the contractor's profits have already been established by other methods.

In the main, the Saltonstall Bill contains several favorable changes; however, a few changes to the bill suggested by the Department of Defense are listed as follows:[46]

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[45] National Security Industrial Association, Washington, D. C. Bulletin No. 142-59, Subject: Saltonstall Legislation to Amend Title 10 of the U. S. Code with Respect to Procurement Procedures of the Armed Services, June 5, 1959.

[46] Senate Subcommittee of the Committee on Armed Services, Military Procurement Hearings, 1959, pp. 5-11.

1. Procuring offices should be free to determine whether the use of performance specifications, design specifications, or a combination of both, would best serve the interest of the Government.

2. Provision be included in contracts for the prime contractor to agree to accomplish the maximum amount of subcontracting to small business.

3. Emphasizing a single weapon system and a single prime contractor is unduly restricted. Other methods of management and procurement, which have proved successful, should be permitted so that the type will fit the case and allow greatest possible flexibility in the procurement of weapon systems.

4. The word "weapons system" be used in lieu of "operational system."

5. Renegotiation provisions be continued.

It is considered that the most significant part of the Saltonstall Bill would be to raise competitive negotiation to an equal status with formal advertising as a method of procurement. It is felt this feature alone will eliminate sufficient management frustrations, resulting from the present law so as to minimize the necessity for use of the weapons system procurement, which is also a part of the bill. Apart from this thought, the weapons system should be merely another means of procurement, as recommended by the Defense Department, and should be used only where no other means can be employed.

S. 1383 (86th Cong., 1st Sess.) Introduced by Senator Williams

This bill would (1) require the head of the agency, in permitting negotiation, to make determinations in conformity with regulations prescribed by the Secretary of Defense, (2) to provide uniform practices in negotiations, (3) to make effective provision for use of competitive bidding and (4), to require agency heads to make certain annual reports to Congress with

respect to negotiated contracts.

In general the Defense Department opposes S. 1383, and states that detailed, uniform regulations are already found in the Armed Services Procurement Regulations.[47] Further, the proposed revision requiring formal determinations in advance and a report to the Attorney General would be administratively burdensome.

The comments of the Defense Department are concurred in by this writer since the Williams Bill offers nothing not already in existence, except additional reports.

S. 1875 (86th Cong., 1st Sess.) Introduced by Senator Javits

In the opinion of Senator Javits, his bill would:[48]

> 1. Spell out as firm policy that the utilization of open, competitive bidding methods, as consistent with National Security needs, is the Government's and the public's best guarantee of economical, efficient purchasing of goods and services by defense agencies;
>
> 2. Provide that where our national security requires that open bidding be replaced by negotiation, such negotiation shall be of a competitive nature to the maximum degree possible and should involve two or more concerns; and
>
> 3. Include among those factors already giving prime consideration by the Armed services in awarding business under the set-aside program that a fair proportion of purchases be placed with (a) small business concerns, (b) concerns located in areas of substantial labor surplus, and (c) eligible suppliers who have received the smallest share of business as well as being in different geographical areas.

The Defense Department opposes the bill because the procurement preferences would accord particular firms and

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[47] Ibid., pp. 18-21.

[48] Ibid., p. 69.

special areas. Further, the bill would either increase the taxpayer's burden or diminish the procurement dollar for national defense. Many provisions in the bill already exist and are in effect. In essence, the Javits bill provides for wider use of formal advertising.

It appears to the writer that paragraphs 1 and 3 above are inconsistent and would create an administrative nightmare. Already the Defense Department is heavily encumbered with requirements regarding small business and labor surplus, which necessitate special effort by contracting officers and detract from the primary objective of supporting the Armed Forces with timely deliveries at minimum cost and with high material reliability.

S. 2487 (86th Cong., 1st Sess.) Introduced by Senators Smathers and Sparkman

S. 2487 would require the devising of a program for defense subcontracting where contracts exceed $1 million and, further, would explore opportunities for expanded participation of small business in subcontracting.[49]

H. R. 896 (86th Cong., 1st Sess.) Introduced by Rep. Philbin

This bill provides for restricting further the use of the 17 negotiation exceptions, increases the dollar limitation to $2500, and establishes special reports to Congress.

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[49] American Enterprise Association Inc., Bill Analysis--Proposals to Amend Military Procurement Statutes, p. 6.

It is considered that the present exceptions are sufficiently restrictive. The dollar limitation has already been raised to $2500.

H. R. 5137 Introduced by Rep. Bates

This bill is a companion bill to the Saltonstall bill, introduced in the House at Senator Saltonstall's request, and is substantially identical to his bill.

H. R.s 6964, 7002, 7061, 7076, and 7090 Introduced by Reps. Anfuso, Kilburn, Wharton, and Bary, respectively

These bills are identical to the Javits Bill, S. 1875.

S. 8141, H.R.s 184, 895, 6060, 6203, 6612, 6942 and 7150[50]

These are miscellaneous bills which cover special conditions affecting such matters as labor surplus, textile procurements or Buy American.

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[50] Ibid., pp. 6-7.

CHAPTER VI

RECOMMENDATIONS

1. The Armed Services Procurement Regulations be amended to specify equal status and dignity for negotiation and formal advertising, and for the use of either as appropriate for the occasion.

2. If item 1 above is not adopted, then 10 U. S. Code 2304(a)(3) be changed to permit negotiation if the aggregate amount is less than $10,000. This revision will permit more expeditious and business-like processing of small purchases in the open market.

3. In any event, the present Armed Services Procurement Regulations not be made further restrictive. Though it is considered unduly burdensome, at least it is workable in its present form.

4. The Defense Department develop additional statistical data, employing sampling techniques where practical, for timely Congressional dissemination, and thus be better prepared to assure Congress that the procurement function is being carried out in a manner which is most advantageous to the Government.

5. The Defense Department realign statistical data to reflect what was actually obtained by active competition.

6. A continuing evaluation of training programs be instituted for positive indoctrination of procurement and management personnel. Emphasis should be given to the need for effective communications between personnel concerned with procurement, especially between those who initiate and specify requirements and those who actually buy.

7. A comprehensive, formal development program, geared to contracting dollar limitations, be instituted to attain proficiency. Duty assignments should relate contracting responsibility to experience and training. It is understood that the Air Force has such a policy and issues "warrants" to designated military and civilian contracting officers.

8. Personnel with engineering education and experience be inducted into the procurement program and trained as military negotiators and buyers. It is far easier for engineers to learn the businessman's language than vice versa.

9. Consideration be given by the Defense Department to further publicize the bid and award results of competitive negotiation similarly to formal advertising.

10. The archaic passive voice be discontinued in military correspondence, at least in the procurement area. Rather than say "It is determined . . .", let's say "I determine . . . ."

11. Contracting officers be allowed to amend an existing uncompleted contract for repeat purchases of an item if they consider the price reasonable and in other ways is in the best interest of the Government.

12. Defense Department, as a matter of policy, avoid "over-reacting" to criticism and "second guessing" of Congressional groups. Rather, it should continue good management techniques in that delegation of responsibility should not be accompanied by "straightjacket" and time-consuming controls. Techniques such as pre-negotiation clearances from levels higher than the immediate head of the field purchasing activity should not be practiced. These techniques be confined to the Head of the field activity.[51]

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[51] "The GAO: What Price A Headline?", Armed Forces Management, April 1960, p. 7.

. DOCUMENTATION SHEET FOR Purchase Request No._____ Date _____

. REQUIRING ACTIVITY_____

. PREPARED BY _____ Division _____ Tel. No._____

. PERSON HAVING TECHNICAL COGNIZANCE _____ Tel. No._____

. SUPPLIES OR SERVICES REQUESTED. (rief description in non-technical language. This will suplement description on request itself).

5. PURPOSE OF THIS PROCUREMENT

Evaluation Quantity _____

Initial Production Quantity _____

Follow-On Production Quantity _____

If Follow-On Production Quantity answer _____

7. UNITS PRODUCED OR ON ORDER TO DATE _____

8. ARE THERE ANY ESTIMATED FUTURE REQUIREMENTS? YES_____ NO _____

If YES, indicate them below and give date and quantity of next procurement of the item (est.)

9. RECOMMENDED DOCUMENT

_____ New Contract _____Amendment to Contract - If checked, Why?

10. DELIVERY SCHEDULE OR COMPLETION DATE (State in terms of definite month or months for each contract item if possible)

Appendix I

. ABOVE DELIVERY DATES ARE

_____ Desired _____Required

IF DESIRED, SCHEDULE SLIPPAGES OF

_____ Months are Allowable

. SHOULD PREMIUM PRICES BE PAID TO MEET SCHEDULE?

_____ YES _____ NO If YES, state reasons below.

. IF DELIVERY SCHEDULE IS REQUIRED, STATE SOURCE OF REQUIREMENT?

. DELIVERY IS TO BE MADE

_____ F.O.B. DESTINATION _____ F.O.B. CARRIER AT OR NEAR CONTRACTOR'S PLANT

5. METHOD OF SHIPMENT

_____ CARLOAD OR TRUCKLOAD _____LESS THAN C-LOAD OR TRUCKLOAD

ESTIMATED UNIT SHIPPING WEIGHT

6. DESTINATION (If unknown, so state and give a destination point for use in evaluating freight)

7. INSPECTION AT

_____Source _____Destination _____Other If other explain in item_____

8. ACCEPTANCE AT

_____Source _____Destination _____Other If other explain in item_____

9. IF QUANTITY VARIATIONS ARE ALLOWABLE, INDICATE % (Must be 10% or less)

± _____ For Items _____ over and/or under

0. WILL THE GOVERNMENT SUPPLY MATERIAL UNDER THIS CONTRACT?

_____ Yes _____ No If YES attach list

1. BASIS OF THE COST ESTIMATE IS _____ _____
Past Contracts other

If other, breakdown estimate as follows:

Per Unit

_____ Labor Hours _____ Type

_____ Material _____ Type

The largest item of cost is _____

22. SECURITY REQUIREMENTS AND SECURITY requirements check list (DD Form 254).

_____ Request for Proposals should be classified.

_____ Contractual Document should be classified.

_____ The Procurement Requires, or may require, generation of, or access to classified information by contractor personnel in order to perform the contract. *

* (Check here if the work to be performed under the contract may require the use of classified data by any contractor personnel, regardless of whether the contractual document or the end product, i.e. the equipment or services being procured will be classified.

23. SPECIFICATIONS ARE:

____ Formal Specifications (i.e. Military, Federal, Experimental)

____ Informal Specs (design and performance)

____ Other: (Explain)

. **DRAWINGS:** Drawings; (such as development drawings or production manufacturing drawings).

_____ Are available (State what kind) _____

_____ Are not available (State why not _____

_____ Other (describe below)_____

5. **THE GOVERNMENT**

_____ HAS REPRODUCTION RIGHTS _____ DOES NOT HAVE REPRODUCTION RIGHTS

_____

The Government

_____ HAS _____ DOES NOT HAVE

a right to the use of drawings, desight data, models, etc. for the purpose of soliciting competitive proposals.

(Requiring Activity will indicate whether the Government has such rights after consultation with Patent Counsel. References to previous contracts for research and development, pilot line procurement, or production, will often divulge this information.)

26. **QUALITY OF THE AVAILABLE SPECIFICATIONS AND DRAWINGS**

Could any responsible bidder follow these drawings and specs and produce the item. _____ or _____ . If no, what prevents him from being able to do so.
(Yes) (No)

What steps are being taken to make drawings and specs adequate for competitive purchase.

7. QUALIFIED PRODUCTS LIST

_____ Item is on the QPL (If checked, complete A below, if not checked, complete B)

SPECIFICATION NO.	SPECIFICATION DATE	CLASS	GRADE OR MODEL (If applicable)

A (For example, in the procurement of a certain type of adhesive, the information desired is "QPL-397-13, dated 26 June 1958, Type I, Class 1, Grade A.")

List names and addresses of all contractors on QPL for items to be purchased.

The specification

_____REQUIRES _____DOES NOT REQUIRE qualifications testing or approval

If the first is checked, also check whether requirements will or will not be waived and complete the specification No., etc.

B Requirements for qualifications testing or approval

_____ WILL _____WILL NOT be waived

SPECIFICATION NO. SPECIFICATION DATE GRADE OR MODEL (if applicable)

CLASS

28. IF ITEMS ARE NOT ON QPL, ARE SAMPLES REQUIRED FOR TESTING OR APPROVAL?

_____ Yes _____ No If YES explain below

29. ARE THEY

_____ Production _____Preproduction

30. TEST TIME (Months) QUANTITY DATE REQUIRED TESTING ACTIVITY

GOVERNMENT FURNISHED PROPERTY. THE CONTRACTOR

_____ WILL REQUIRE _____ WILL NOT REQUIRE

Government Furnished Property to perform this contract. (If he will, list or refer to such property below.) Government Furnished Property includes Special Tooling as defined in ASPR 13-101(e), Material as defined in ASPR 13-101(d), Bailed Aircraft, etc.; but excludes industrial facilities, machine tools, and related production equipment

SPECIAL TOOLING AS DEFINED BY ASPR 13-101(e)

_____WAS REQUIRED _____WAS NOT REQUIRED

under a previous contract for the same type of equipment.

IS GOV'T-OWNED SPECIAL TOOLING AVAILABLE FOR PERFORMANCE OF THIS CONTRACT (If in more than one plant specify below) _____ Yes _____ No

ACQUIRED UNDER CONTRACT No.(s) LOCATION(s) DOLLAR VALUE

WILL ADDITIONAL FACILITES BE NEEDED TO PERFORM THE CONTRACT? (If yes, explain in item _____)

_____Yes _____ No _____ Other

IS TECHNICAL DOCUMENTATION TO BE PROCURED UNDER THIS CONTRACT?

_____ Yes _____ No If YES, it should be a separate contract item

IF SUCH DOCUMENTATION IS BEING PROCURED WILL IT CONTAIN INFORMATION PATENTED BY or proprietary to contractor?

_____ Yes _____ No

IF PROPRIETARY DATA ARE REQUIRED AND THIS PR WILL RESULT IN A SUPPLY CONTRACT, JUSTIFY THE NEED FOR SUCH DATA

EQUIPMENT DESIGNED AND DEVELOPED BY | CONTRACTOR | CONTRACT NUMBER | DATE DEVELOPMENT COMPLETED

ESTIMATED PRODUCTION LEAD TIME (Months) | WOULD CONTRACTORS OTHER THAN THOSE LISTED ABOVE REQUIRE A SUBSTANTIAL INITIAL INVESTMENT OR AN EXTENDED PERIOD OF PREPARATION FOR MANUFACTURERS TO PRODUCE THESE SUPPLIES (Explain)
☐ Yes ☐ No

INFORMATION ON LAST CONTRACT FOR THESE SUPPLIES OR SERVICES | CONTRACT NO. | CONTRACTOR | WERE DELIVERIES ON SCHEDULE
☐ Yes ☐ No

IF DELIVERIES ON PREVIOUS CONTRACT WERE SERIOUSLY DELINQUENT DESCRIBE CIRCUMSTANCES

LIST ANY ADDITIONAL CONTRACTORS THAT HAVE SUCCESSFULLY PROVIDED OR ARE PRODUCING THE SAME OR SIMILAR ITEMS

CONTRACTOR	CONTRACT NO.	ITEM	UNIT PRICE/COST

3. POSSIBLE SOURCES (Names and addresses)	RECOMMENDED FIRMS		LIST $ AMOUNTS IF FIRM HAS		IF FIRM SCHEDULED AS A MOBILIZATION SUPPLIER FOR		
	Yes	No	Gov't Facilities	Spec'l Tooling	Reqtd Item	Any other Item	Security Clearance

4. EXPLAIN WHY COMPANIES NOT RECOMMENDED ABOVE ARE NOT QUALIFIED

(Separate detailed statement for each)

5. IF THERE IS TO BE A RECOMMENDATION FOR NEGOTIATION:

FOR EACH OF THE RECOMMENDED SOURCES INDICATE:

(a) Basis of evaluation.

(b) The significance of technical and specialized character of the item

(c) The basis for representation of advantageous lead time position

(d) Where the absence of specs & drawings is a factor in contractor selection what steps are to be taken to obtain them and at what point is subsequent procurements will they become available so as to permit competition.

46. ARE ALL MOBILIZATION SUPPLIERS IN ABOVE LIST/

☐ Yes ☐ No ☐ Not Applicable If NO explain in item _____

47. ARE ALL KNOWN SMALL BUSINESS FIRMS RECOMMENDED ABOVE

☐ Yes ☐ No If NO, explain in item _____

8. IF A SMALL BUSINESS SET ASIDE IS RECOMMENDED STATE OPTIMUM PROCUREMENT QUANTITY_____?

IF NOT RECOMMENDED, STATE REASON

9. HAS THIS PROCUREMENT BEEN COORDINATED WITH OTHER ACTIVITIES:

☐ Yes ☐ No

10. ARE SPARE PARTS TO BE PROCURED? IF YES, INDICATE SUPPORT ACTIVITY (ASO,GSSO, BRASO, etc.)

☐ Yes ☐ No

11. SPARE PARTS WILL BE PROCURED IN ACCORDANCE WITH

☐ Provisioning Procedure ☐ Attached List ☐ Other If other is checked fully explain formula to be used.

12. PRIORITY_____

IF PRIORITY DESIGNATOR IS 10 OR BELOW, INCLUDE JUSTIFICATION (See BUSANDA MANUAL 22001 and NAMC Inst 4830.1D)

13. ITEM	APPROPRIATION	BUREAU CONTROL NO.	EXPENDITURE ACCOUNT	OBJECT CLASS	PROGRAM	QUANTITY	UNIT PRICE OR COST

14. ☐ COMPLETE FINANCIAL DATA IS IN ABOVE BLOCK ☐ COMPLETE OR CONTINUATION OF FINANCIAL DATA IS ATTACHED

15. PURCHASE ACTION IS RESTRICTED TO THE TOTAL monetary amount cited,

☐ Do not exceed amount cited hereon, or

☐ Do not exceed amount cited hereon by more than $_____.

16. IF THE PURCHASE PRICE EXCEEDS THE ABOVE, obtain additional authorization from _____.

17. ARE THERE SPECIAL QUALITY CONTROL conditions in the Specifications. ____ Yes ____ No

If yes, describe nature of Quality Control Considerations, i.e. Critical attributes listed, tests.

Are the sampling methods specified in MIL-S-501B appropriate? ____ Yes ____ No

If so, give Acceptable Quality Level, Sampling Level, and classify defects (if this information is not in specifications or drawing.)

58. RECOMMENDATION FOR ADVERTISING OR NEGOTIATION

I recommend that this New Procurement should be

_____ Advertised _____ Negotiated

If advertised, complete form except for sections designated by asterick. (*)

59. JUSTIFICATION FOR NEGOTIATION. If you recommend that this New Procurement should be negotioted: (a) State why the procurement cannot, rather than should not, be made by advertising, and (b) Set forth facts rather than conclusions which establish a basis for negotiatiating the procurement.

60. INSTRUCTION OR TRAINING OF CIVILIAN EMPLOYEES

☐ Procurement is for the instruction or training of Navy Civilian employees by a non-federal agency, educational institution, or industrial concern.

61. PUBLICATION REQUIREMENTS. The purchase of publications

☐ Is included ☐ Is not included

62. PROCUREMENT OF TECHNICAL AND SPECILIZED MATERIAL. This procurement

☐ Covers ☐ Does not cover quantity purchase of component material as herein defined.

☐ Only NAMC evaluation without BuWeps approval is required. If checked, attach the required certification by the technical division Director or Assistant Director.

☐ Major design modifications are contemplated

☐ An authorization by the Chief of BuWeps is required. If checked, attach the BuWeps authorization or decision.

53. WILL SPECS AND DRAWINGS BE SENT TO PROSPECTIVE BIDDERS

☐ If YES attach specs and dwgs ☐ No

54. SPECIFY NO. AND TYPES OF DRAWINGS AND SPECS REQUIRED BY TECHNICAL BRANCH SUCCESSFUL CONTRACTOR, OR INSPECTION

55. DOES THE GOVERNMENT HAVE A RIGHT TO THE USE OF DESIGN DATA,MODELS,ETC. FOR THE PURPOSE OF SOLICITING COMPETITIVE PROPOSALS?

☐ Yes ☐ No

56. IS A MODEL AVAILABLE?

☐ Yes ☐ No

67. IF YES INDICATE WHAT TYPE

☐ Expermtl ☐ Production ☐ Pilot prod. or preprod.

68. IF YES, CAN MODEL BE FURNISHED TO CONTRACTOR AS GOVERNMENT FURNISHED PROPERTY

☐ Yes ☐ No

69. INDICATE WHICH OF THE FOLLOWING REPORTS CLAUSES AND OTHER CLAUSES ARE REQUIRED IN THE CONTRACT

☐ Production Progress Report DD 375

☐ Financial Status Report of Contract DD 1097

☐ Technical Reports (Indicate their frequency, to whom, No. of copies of each report, and when final report is to be submitted)

☐ Manufacturing Data, OSTD.100 (Required only if special tooling is required)

☐ Bills of Material (State type and indicate for which items)

☐ OTHER REPORTS (Describe)

0. SPECIAL DISTRIBUTION? IF ANY: OF CONTRACT DOCUMENTS

1. PREPARATION OR INVESTMENT

Period of Preparation For Manufacture (In Months)

Initial Investment - Preliminary Engineering and Development (dollars)

Initial Investment - Special Tooling (dollars)

Initial Investment - Industrial Facilities (dollars)

2. PRESENT SOURCE(s)(Actual) NEW SOURCES (Estimated)

3. ARE SUBSTANTIAL SPEC. CHANGES OR MODIFICATIONS EXPECTED?

☐ Yes ☐ No

4. HOW LONG WILL SUBSTANTIAL CHANGES CONTINUE? (Months)(Explain in item)

5. IS THIS PR FOR TECHNICAL OR NON-PERSONAL SERVICES FOR THE ASSEMBLY, INSTALLATION, OR SERVICING OF EQUIPMENT OF A HIGHLY TECHNICAL OR SPECIALIZED NATURE? (If Yes, explain fully in item)

☐ Yes ☐ No

6. DOES THIS PR INVOLVE MAINTENANCE, REPAIR, ALTERATIONS OR INSPECTION. THE EXACT NATURE OF WHICH CANNOT BE DETERMINED AT THIS TIME? (If Yes, explain in item)

☐ Yes ☐ No

7. TYPE OF GUARANTEE REQUIRED (If other, explain in item)

☐ Standard ☐ Two years after dlvry or one yr after installation ☐ Other

28. IS ITEM ON DOD PREFERENTIAL PLANNING LIST (PPL)?

☐ Yes ☐ No

If Yes, on DOD PPL No._____

29. IS ITEM ON DEPARTMENT OF THE NAVY SUPPLEMENTAL PLANNING LIST (DNSPL)?

(Item will not be both PPL and DNSPL) (If Yes answer_____)

☐ Yes ☐ No

30. LIST NAMES AND ADDRESSES OF PLANNED PRODUCERS

31. JUSTIFY WHY THIS PROCUREMENT MUST BE AWARDED TO OTHER THAN PLANNED PRODUCER(s)

32. IS IT NECESSARY TO MAINTAIN MORE THAN ONE SOURCE FOR THESE SUPPLIES FOR MOBILIZATION? (If Yes, answer_____)

☐ Yes ☐ No

INDICATE NUMBER OF SOURCES

33. STATE ANY STEPS THAT HAVE BEEN TAKEN TO ESTABLISH ADDITIONAL SOURCES AND RESULTS OF SUCH STEPS

34. MOBILIZATION REQUIREMENTS

☐ Source is DD 754 Dated _____ ☐ Other source (Specify)

78B Requirements M-Day Units(+) M-Day M-Day+_____ M-Day+_____

FOR R&D AND SOLE SOURCE REPRESENTATIONS :

5. STAGE OR PROGRAM

☐ Research ☐ Design of Hardware ☐ Further Development of Existing Hardware

☐ Evaluation of Existing Hardware ☐ Engineering in Support of Production

6. DISCUSS THE OBJECTIVES OF THIS PROCUREMENT AND ITS RELATION TO ANY PREVIOUS OR CONCURRENT CONTRACTS (including current status of program or project)

7. DISCUSS THE COMPLEXITY AND UNIQUE PROBLEMS ANTICIPATED IN THE WORK TO BE PREFORMED

8. IS TECHNICAL DIRECTION REQUIRED? (If Yes, who will provide technical direction?)

☐ Yes ☐ No

9. IF HARDWARE IS TO BE PROVIDED ARE THEY

☐ Expermental models ☐ Developmental models ☐ Evaluation and Test Quantities

0. THE PURPOSE OF THE HARDWARE IS TO

☐ Determine Workability or Suitability of Design

☐ Evaluate operational characteristics or Service Suitability

☐ Demonstrate Producibility

☐ Other

1. IF SUPPLIES ARE TO BE FABRICATED FOR TESTS, TESTS ARE SCHEDULED FOR

DATE LOCATION

2. IS IT POSSIBLE TO DESCRIBE IN PRECISE DETAIL OR BY ANY DEFINITE DWGS. OR SPECS. THE NATURE OF THE WORK TO BE PREFORMED UNDER THIS PROCUREMENT?

☐ Yes ☐ No (If No explain)

. CAN ONLY THE ULTIMATE OBJECTIVES AND GENERAL SCOPE OF THE WORK BE OUTLINED?

☐ Yes ☐ No (If No explain)

. SELECTION OF CONTRACTOR - IS IT NECESSARY TO OBTAIN TECHNICAL PROPOSALS TO DETERMINE FIRM WITH HIGHEST TECHNICAL COMPETENCY

☐ Yes ☐ No

. SOLE SOURCE BECAUSE

☐ Most Technically Competent Firm

☐ Continuation of Program Already Undertaken By Congress

OTHER REASONS (Explain)

. IF SOLE SOURCE IS RECOMMENDED, STATE REASONS WHY AN EQUAL DEGREE OF TECHNICAL COMPETENCY CAN BE FOUND IN NO OTHER FIRM, OR THE EXTENT OF PROGRAM PREVIOUSLY UNDERTAKEN (i.e. dollars and time expended) AS APPLICABLE

. IF TECHNICAL PROPOSALS ARE TO BE SOLICITED. HAVE ALL FIRMS BEEN EVALUATED TO ASSURE THAT THEY ARE OF HIGH TECHNICAL COMPETENCE AND ARE QUALIFIED TO PREFORM THIS PROCUREMENT

☐ Yes ☐ No

. HAVE ALL REGULARLY AVAILABLE SOURCES OF INFORMATION BEEN SEARCHED IN COMPILING LIST OF RECOMMENDED FIRMS

☐ Yes ☐ No

9. ESTIMATED CALENDAR DAYS RQD FOR CONTRACTOR'S RESPONSE

00. REMARKS (Include any additional information that would justify the use of negotiation)

01. CERTIFICATION - I certify that the facts and representations under my cognizance in this Procurement Request and its supporting papers are accurate to the best of my knowledge and belief.

ORGINATOR (Signature, Ext.) _____

Person Technically cognizant. If other than originator

(Signature, Ext.) _____

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AVIATION COMMAND ASSIGNMENT--PROBLEMS AND PROCEDURES OF PERSONNEL DETAILERS IN SELECTING NAVAL AVIATORS FOR AVIATION COMMAND BILLETS

by

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